

VS.

OF NUECES COUNTY, TEXAS

UNITED RENTALS, INC.

CAUSE NO. 09-1125-G

CITATION

THE STATE OF TEXAS

NOTICE TO THE DEFENDANT: "You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you."

TO: United Rentals, Inc.
c/o Corporation Service Company
d/b/a CSC Lawyers Incorporating Service Company
710 Brazos, Suite 1050
Austin, Texas 78701

Defendant, UNITED RENATALS, INC. in the hereinafter styled and numbered cause:

You are hereby commanded to appear before the 319 Court of NUECES County, Texas to be held at the courthouse of said County in the City of CORPUS CHRISTI, NUECES COUNTY, TEXAS, by filing a written answer to the petition of Plaintiff at or before 10 o'clock a.m. of the Monday next after the expiration of 20 days after the date of service hereof, a copy of which accompanies this citation, in Cause number 09-1125-G styled ISMAEL TREVIÑO VS. UNITED RENTALS, INC.

Said *Plaintiff's Original Petition* was filed in said Court, by CLAY BONILLA, (attorney for Plaintiff), whose address is 2727 Morgan, Corpus Christi, Texas 78405 on March 11 2009.

IF NOT PREPARED BY THE DISTRICT CLERKS' OFFICE FILL IN THIS PORTION:

WITNESS FATCY PEREZ DISTRICT CLERK Clerk of the County Court, Nueces County, Texas.

Issued and given under my hand and seal this the 11 day of March, 2009. By Clay Bonilla, Deputy.

CLERK OF COURT OF THE DISTRICT CLERK, COUNTY COURT NUECES COUNTY, TEXAS
901 LEOPARD STREET, ROOM 313, CORPUS CHRISTI, TEXAS 78413.

OFFICER/AUTHORIZED PERSON RETURN

Came to hand at o'clock M., on the day of , 2009. Executed at in COUNTY, TEXAS at o'clock M., on the day of , 2009, by delivering to Corporation Service Company d/b/a CSC-Lawyers Incorporation Service Company, in person, a true copy of this Citation together with the accompanying one (1) copy of Plaintiff's Original Petition attached thereto and I endorsed on said copy of this Citation the date of delivery. To certify which I affix my hand officially this day of , 2009.

by
Process Server

Authorized Person - Printed Name

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned Notary Public on the day of , 2009.

Notary Public - State of Texas

Commission expires:

NOT PREPARED BY
THE DISTRICT CLERK



EXHIBIT "A"

THE LAW OFFICES OF WILLIAM D. BONILLA, P.C.

ATTORNEYS AT LAW

WILLIAM D. BONILLA

2727 MORGAN AVENUE, 3RD FLOOR

CORPUS CHRISTI, TEXAS 78401-1821

PHONE: (361) 961-6044

FAX: (361) 961-1031

www.BonillaLawFirm.com

email:

BonillaLaw@aol.com

MEMBER OF THE COLLEGE
OF
THE STATE BAR OF TEXAS

March 11, 2009

Via Hand Delivery
Ms. Patsy Perez
Nueces County District Clerk
Nueces County Courthouse
901 Leopard Street, Room 313
Corpus Christi, Texas 78401

Re: Ismael Trevino vs. United Rentals, Inc.

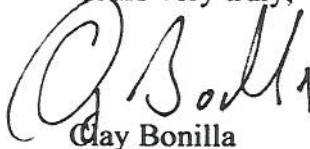
Dear Ms. Perez:

Enclosed please find the original and two (2) copies of *Plaintiff's Original Petition and the Citation* to be served on Defendant. Also enclosed is our firm's check number 16550 in the amount of \$239.00 for filing fees, the Civil Information Sheet and Nueces County Process Request Sheet.

Please file the original of the petition and kindly file-stamp the copies, returning the copies to me via our runner. Additionally, please file-stamp the citations and return them to us so that we may have our customary process server obtain service on the defendant.

Your assistance is greatly appreciated.

Yours very truly,



Clay Bonilla
Attorney at Law

CB:lem

Enclosures: As stated

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FILED
2009 MAR 11 PM 4:55
CLERK
NUECES COUNTY, TEXAS

CAUSE NO. 09-1125-C

ISMAEL TREVINO
Plaintiff,

V.

UNITED RENTALS, INC.
Defendant.

§ IN THE DISTRICT COURT
§
§
§ 319 JUDICIAL DISTRICT
§
§ OF NUECES COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Ismael Trevino, hereinafter called Plaintiff, complaining of and about United Rentals, Inc., hereinafter called Defendant, and for cause of action shows unto the Court the following:

DISCOVERY CONTROL PLAN LEVEL

1. Plaintiff intends that discovery be conducted under Discovery Level 2.

PARTIES AND SERVICE

2. Plaintiff, Ismael Trevino, is an Individual whose address is 25014 PVT 454, Mathis, San Patricio County, Texas 78368.

3. Defendant United Rentals, Inc., a Nonresident Corporation, may be served pursuant to sections 5.201 and 5.255 of the Texas Business Organizations Code by serving the registered agent of the corporation, Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company, at 701 Brazos, Austin, Texas 78701, its registered office. Service of said Defendant as described above can be effected by certified mail, return receipt requested.

CLERK OF COUNTY &
DISTRICT COURTS
NUECES COUNTY, TEXAS
2009 MAR 11 PM 4:55
FILED MAR 11 2009
10468.07

JURISDICTION AND VENUE

4. The subject matter in controversy is within the jurisdictional limits of this court.

5. This court has jurisdiction over Defendant, United Rentals, Inc., because said Defendant purposefully availed itself of the privilege of conducting activities in the state of Texas and established minimum contacts sufficient to confer jurisdiction over said Defendant, and the assumption of jurisdiction over United Rentals, Inc. will not offend traditional notions of fair play and substantial justice and is consistent with the constitutional requirements of due process.

6. Plaintiff would show that Defendant, United Rentals, Inc., had continuous and systematic contacts with the State of Texas sufficient to establish general jurisdiction over said Defendant.

7. Venue in Nueces County is proper in this cause under Section 15.002(a)(1) of the Texas Civil Practice and Remedies Code because all or a substantial part of the events or omissions giving rise to this lawsuit occurred in this county.

FACTS

8. On or about January 5, 2009, Ismael Trevino was working with equipment from United Rentals. Plaintiff, Ismael Trevino, was using the trench box for the purpose and in the manner in which it was intended to be used, suddenly and without warning the shackle holding the trench box onto wires broke in numerous fragments causing the metal wire to strike the left side of his face, injuring Ismael Trevino, as hereinafter described.

LIABILITY OF UNITED RENTALS, INC.

9. While engaged in the manufacture and sale of the trench box, Defendant, United Rentals, Inc. manufactured and sold a certain trench box and other like products, to consumers

within the stream of commerce. Defendant, United Rentals, Inc., intended and expected that the trench box, so introduced and passed on in the course of trade would ultimately reach a consumer or user in the condition in which it was originally sold.

10. Plaintiff, Ismael Trevino, also alleges that the product in question, namely the trench box, was defective and unsafe for its intended purposes at the time it left the control of United Rentals, Inc. and at the time it was sold in that it failed in its design to prevent the shackle from breaking. Due to the unsafe operation of, but not limited to, the strength of the shackle, the product was defectively designed and unreasonably dangerous in that it was not strong enough to support the trench box.

11. Plaintiff therefore invokes the doctrine of strict liability in Section 402A, Restatement of the Law of Torts, 2d, and as adopted by the Supreme Court of Texas. Further, in this connection, Plaintiff would show the court that the defect in design was a producing cause of the injuries and damages set forth below.

12. In addition, Plaintiff would show the court that the occurrence made the basis of this suit and the resulting injuries and damages set out below were a direct and proximate result of the negligence of United Rentals, Inc. in one or more of the following respects, or by combination thereof:

- A. Failing to have sound, efficient and sufficient shackles to support said trench box;
- B. Failing to inspect said trench box and its attendant equipment;
- C. Failing to properly maintain said trench box and its attendant equipment; and
- D. Failing to properly warn Plaintiff about the condition of said trench box and its attendant equipment;

13. Pleading further, Plaintiff would show the court that the occurrence made the basis of this suit and the resulting injuries and damages set out below were a direct and proximate result of negligence attributable to United Rentals, Inc. in one or more of the following respects, or by a combination thereof:

- A. Failing to use proper materials reasonably suited to the manufacture or design of the trench box or the component parts thereof; and
- B. Failing to use due care to test and/or inspect the trench box or the component parts thereof to determine its durability and function ability for the purpose for which it was intended;

14. Pleading further, Plaintiff would show the court that the occurrence made the basis of this suit and the resulting injuries and damages set out below were a direct and proximate result of the negligence of United Rentals, Inc. in one or more of the following respects, or by a combination thereof:

- A. Failing to inspect the trench box, its component parts and/or attendant equipment for functional defects, specifically including but not limited to the strength of the shackle;
- B. Failing to use due care to service the trench box so as to permit its safe operation, specifically including but not limited to the safe operation of the trench box when used for the purpose and in the manner intended; and
- C. Failing to warn Plaintiff and the Defendants for whom it serviced the trench box for its disrepair and dangerous condition.

All of which Defendant, United Rentals, Inc. knew, or in the exercise of ordinary care, should have known.

15. In addition, Defendant, United Rentals, Inc., expressly and impliedly warranted to the public generally, that the trench box was of merchantable quality and was safe and fit for the purpose

intended when used under ordinary conditions and in an ordinary manner. Plaintiff relied upon these express and implied warranties and suffered the injuries and damages set forth below as a proximate result of the breach of these warranties.

16. Defendant's aforementioned conduct constitutes a careless, negligent, and reckless disregard of a duty of care for others.

DAMAGES FOR PLAINTIFF, ISMAEL TREVINO

17. As a direct and proximate result of the occurrence made the basis of this lawsuit, Plaintiff, Ismael Trevino, was caused to suffer injuries to the left side of his face, and has incurred the following damages:

- A. Reasonable medical care and expenses in the past. These expenses were incurred by Plaintiff for the necessary care and treatment of the injuries resulting from the accident complained of herein and such charges are reasonable and were usual and customary charges for such services in Nueces County, Texas;
- B. Reasonable and necessary medical care and expenses which will in all reasonable probability be incurred in the future;
- C. Physical pain and suffering in the past;
- D. Physical pain and suffering in the future;
- E. Physical impairment in the past;
- F. Physical impairment which, in all reasonable probability, will be suffered in the future;
- G. Loss of earnings in the past;
- H. Loss of earning capacity which will, in all probability, be incurred in the future;
- I. Disfigurement in the past;

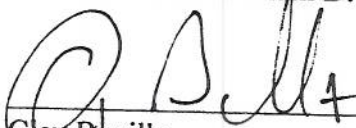
- J. Disfigurement in the future;
- K. Mental anguish in the past;
- L. Mental anguish in the future;
- M. Fear of future disease or condition; and
- N. Cost of medical monitoring and prevention in the future.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff, Ismael Trevino, respectfully prays that the Defendant be cited to appear and answer herein, and that upon a final hearing of the cause, judgment be entered for the Plaintiff against Defendant for damages in an amount within the jurisdictional limits of the Court; together with pre-judgment interest (in accordance with the Texas Finance Code) at the maximum rate allowed by law; post-judgment interest at the legal rate, costs of court; and such other and further relief to which the Plaintiff may be entitled at law or in equity.

Respectfully submitted,

Law Offices of William D. Bonilla, P.C.



Clay Bonilla

Texas Bar No. 24055193

2727 Morgan Avenue, Third Floor

Corpus Christi, Texas 78405

Telephone: (361) 882-8284

Facsimile: (361) 881-1031

Attorney for Plaintiff

Ismael Trevino

PATSY PEREZNueces County District Clerk
Telephone 361 888-0450 Fax 888-0571901 Leopard Street, Room 313
Corpus Christi, Texas
78401P.O. Box 2987
Corpus Christi, Texas
78403CAUSE NUMBER: 09-1125-4Ismael Trevino
PlaintiffNUECES COUNTY DISTRICT COURT 319

NUECES COUNTY COURT AT LAW _____

United Rentals, Inc.
Defendant**CIVIL CASE INFORMATION SHEET**

This form must be completed and filed with every original petition and a copy attached to every original petition served. The information should be the best available at the time of filing, understanding that such information may change before trial. Service must be obtained promptly. Notice is hereby given as per Rule 165a R.C.P. that any case in which no answer has been filed or default judgment signed six (6) months from filing will be eligible for dismissal for want of prosecution.

TYPE OF ACTION: CHECK ALL CLAIMS PLED ☐ Commercial ☒ Personal Injury ☐ Death ☐ Other

- | | | | | |
|---|---|--|---|--------------------------------|
| <input type="checkbox"/> Account Due | <input type="checkbox"/> Admiralty | <input type="checkbox"/> Discrimination | <input type="checkbox"/> Auto | <input type="checkbox"/> Other |
| <input type="checkbox"/> Employment Discharge | <input type="checkbox"/> Environmental Tort | <input type="checkbox"/> Malpractice/Medical | <input type="checkbox"/> Tax | |
| <input type="checkbox"/> Injunction/TRO | <input type="checkbox"/> DTPA | <input type="checkbox"/> Malpractice/Legal | <input type="checkbox"/> Silicone Implant | |
| <input type="checkbox"/> Contract | <input type="checkbox"/> Note | <input type="checkbox"/> Malpractice/Other | <input type="checkbox"/> Fraud | |
| <input type="checkbox"/> Foreclosure | <input type="checkbox"/> Premises Liability | <input type="checkbox"/> Workers Compensation | <input type="checkbox"/> Disbarment | |
| <input type="checkbox"/> Garnishment | <input type="checkbox"/> Railroad | <input type="checkbox"/> Malicious Prosecution | <input type="checkbox"/> Sequestration | |
| <input type="checkbox"/> Conspiracy | <input type="checkbox"/> False Imprisonment | <input type="checkbox"/> Trespass | <input type="checkbox"/> Judgment Nisi | |
| <input checked="" type="checkbox"/> Product Liability | <input type="checkbox"/> Post Judgment | <input type="checkbox"/> Ins. Bad Faith | <input type="checkbox"/> Real Estate | |
| <input type="checkbox"/> Business Dissolution | <input type="checkbox"/> Expunction | <input type="checkbox"/> Name Change | <input type="checkbox"/> Declaratory Judgment | |
| <input type="checkbox"/> Asbestos | <input type="checkbox"/> Assault | <input type="checkbox"/> Dram Shop | <input type="checkbox"/> Bill of Review | |
| <input type="checkbox"/> Defamation | <input type="checkbox"/> Deed Restriction | <input type="checkbox"/> Forfeiture | <input type="checkbox"/> Occupational License | |

Has this dispute previously been in the Nueces County Courts? ☒ No ☐ Yes, in the following court _____Monetary damages sought: ☐ less than \$50,000 ☒ greater than \$50,000Desired discovery level: ☐ Level 1 (TRCP 190.2) ☒ Level 2 (TRCP 190.3) ☐ Level 3 (TRCP 190.4)*

*A case will remain in Level 1, if applicable, or else Level 2 unless and until the court enters an order establishing a Level 3 discovery plan. See TRCP 190.4 & cmt.o. The court may enter a Level 3 plan sua sponte or the parties may request entry of such plan by separate motion id.

Estimate time needed for discovery: ☐ 0-3 months ☐ 4-6 months ☒ 7-12 months ☐ otherIs there likelihood of experts other than treating physicians or experts on attorney's fees? ☐ Yes ☒ NoIs immediate ADR requested? ☒ Yes ☐ NoSignature of attorney or pro se filing this cover sheet: [Signature]Printed name of attorney or pro se filing this cover sheet: Clay BonillaPhone Number: (361) 882-8284Bar Number: 24055193For court use only: Tract assigned: ☐ Track 1 ☐ Track 2 ☐ Track 3

Court coordinator: _____ Date: _____

FILED - PATSY PEREZ
2009 MAR 11 PM 4:55
CLAY BONILLA
NUECES COUNTY, TEXAS
DISTRICT CLERK

NUECES COUNTY PROCESS REQUEST SHEET

901 LEOPARD STREET ROOM 313 / CORPUS CHRISTI, TEXAS 78401

PHONE # 361-888-0450 / FAX # 361-888-0571

FOR EACH PARTY SERVED YOU MUST FURNISH ONE (1) COPY OF THE PLEADING.

CAUSE NUMBER: 09-1125-6 CURRENT COURT: 319 DATE OF REQUEST: _____

SERVICE WILL ONLY BE ISSUED UPON PAYMENT OF COST

TYPE OF SERVICE/PROCESS TO BE ISSUED (SEE REVERSE SIDE)

NAME OF DOCUMENT/PLEADING TO BE SERVED (SEE REVERSE SIDE)

SERVICE BY:

☒ ATTORNEY FOR PICK UP ☐ ATTORNEY RETURN BY MAIL ☐ CONSTABLE ☐ SHERIFF

☐ CIVIL PROCESS SERVER:

AUTHORIZED PERSON: _____

☐ CERTIFIED MAIL

☐ RESTRICTED DELIVERY

PHONE: _____

☐ COURTHOUSE POSTING

OF DAYS TO BE POSTED: _____

BRIEF STATEMENT OF SUIT (SEE REVERSE SIDE)

☐ PUBLICATION

NAME OF PUBLICATION: _____

OF DAYS TO BE PUBLISHED: _____

BRIEF STATEMENT OF SUIT (SEE REVERSE SIDE)

PARTY/PARTIES TO BE SERVED:

[1] NAME/AGENT _____

ADDRESS _____

[2] NAME/AGENT _____

ADDRESS _____

[3] NAME/AGENT _____

ADDRESS _____

ATTORNEY OR PARTY REQUESTING ISSUANCE OF PROCESS:

NAME Clay Bonilla

ATTORNEY BAR # 24055193

MAILING ADDRESS 2727 Morgan Ave. 3rd Floor, Corpus Christi, Texas 78405

PHONE # 361-882-8284

FAX # 361-881-1031

ATTORNEY REPRESENTS:

PLAINTIFF _____

DEFENDANT _____

FILED
2009 MAR 11 PM 4:55
NUECES COUNTY, TEXAS
CLAY BONILLA

CAUSE NO. 09-1125-6

ISMAEL TREVINO
Plaintiff,

V.

UNITED RENTALS, INC.
Defendant.

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IN THE DISTRICT COURT OF

NUECES COUNTY, TEXAS

319TH JUDICIAL DISTRICT

ORIGINAL ANSWER OF UNITED RENTALS INC.

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW United Rentals, Inc. ("United Rentals" and/ or "Defendant") and files this Original Answer to the Plaintiff's Original Petition and for same will show the Court as follows:

I.

Subject to such stipulations and admissions as may hereinafter be made, Defendant asserts a general denial as is authorized by Rule 92 of the Texas Rules of Civil Procedure and respectfully requests that the Plaintiff be required to prove the charges and allegations against this Defendant by a preponderance of the evidence as is required by the Constitution and Laws of the State of Texas.

II.

For further answer herein, if necessary, Defendant invokes all applicable provisions of Chapter 33 of the Texas Civil Practice and Remedies Code and requests that the finder of fact determine the percentage of responsibility, if any, of the Plaintiff, any Defendants, any settling parties and any responsible third parties.

FILED-PATSY PERE
2009 APR - 1 AM 10:36
BY [Signature]
CLERK OF COUNTY &
DISTRICT COURTS
NUECES COUNTY, TEXAS

III.

Defendant invokes all protections and limitations contained in §§ 18.091 and 41.0105 of the Texas Civil Practice and Remedies Code.

WHEREFORE, PREMISES CONSIDERED, Defendant prays that Plaintiff take nothing by this suit and that this Defendant go hence with its costs without day, and for such other and further relief, at law and in equity, to which it may show itself to be justly entitled.

Respectfully submitted,

GORDON & REES, L.L.P.

By: 

Steven D. Selbe
State Bar No. 18004600
Heidi Gumienny
State Bar No. 24036696
1900 West Loop South, Suite 1000
Houston, TX 77027
(713) 961-3366 (Telephone)
(713) 961-3938 (Facsimile)

**ATTORNEYS FOR
DEFENDANT UNITED
RENTALS, INC.**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been sent on 31st day of March, 2009, via U.S. Certified Mail – Return Receipt Requested to the following:

Mr. Clay Bonilla
Law Offices of William D. Bonilla, P.C.
2727 Morgan Avenue, Third Floor
Corpus Christi, TX 78405


STEVEN D. SELBE